



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

[www.howardcountymd.us](http://www.howardcountymd.us)

FAX 410-313-3467

TDD 410-313-2323

December 12, 2013

## TECHNICAL STAFF REPORT

*Petition Accepted on May 29, 2013, Revised on September 19, 2013  
Planning Board Meeting of January 2, 2014  
County Council Hearing to be scheduled*

**Case No./Petitioner: ZRA-145 – Howard County Independent Business Association, Inc.**

**Request:** Zoning Regulation Amendment to amend Section 131.0.N.25, Gasoline Service Stations [Note: now Section 131.0.N.24], to add a Purpose statement; to add a new criteria requiring a finding of reasonable public need and specific evaluation procedures for such a finding; to add new setback requirements from certain land uses and from environmentally sensitive areas; to add criteria concerning car washes, convenience stores, and other uses in certain zoning districts; to add a special criteria for evaluations in the PEC District; and to add new criteria for certain site design requirements and underground fuel storage limits.

Zoning Regulation Amendment to amend Section 131.0.G, Burden of Proof for Conditional Uses, to establish that a greater burden of proof above the standard burden of proof may be required if that is specified elsewhere in the Zoning Regulations.

Zoning Regulation Amendment to amend Section 125.0.A, Definitions, Requirements and Restrictions Applicable to NT Districts, to add a new Section 125.0.A.7.e. requiring that any Gasoline Service Station, where allowed by a Final Development Plan, is subject to Planning Board approval after a public hearing and subject to the same general standards and specific criteria as are required for Conditional Use approval for such a use outside of the NT District.

**Department of Planning and Zoning Recommendation:**

**DENIAL**

### **I. DESCRIPTION OF PROPOSAL**

- **The Petitioner proposes several amendments to the Zoning Regulations. Each proposed amendment is generally described as follows:**
  1. The most significant amendments are proposed to revise the specific criteria for the Gasoline Service Station Conditional Use category in Section 131.0.N. The Petitioner first proposes the addition of a very detailed Purpose statement, which would be unique because the other Conditional Use categories do not include such statements, and this statement emphasizes the establishment of certain standards to prevent the concentration of Gasoline Service Stations and "...to prevent the development of unnecessary Gasoline Service Stations...", for various stated reasons.

**I. DESCRIPTION OF PROPOSAL**

The Petitioner proposes to delete the current text in the Section 131.0.N.25.a. criteria which requires a finding that a proposed Gasoline Service Station will not cause a blighting influence due to a proliferation of such uses within an area, and adds in its place extremely detailed extensive new text requiring a finding for a reasonable public need for a proposed Gasoline Service Station, based on a defined market study analysis for three market areas; an area within a 2.0 mile radius from the proposed site, an area within a 3.0 mile radius from the proposed site, and an area within a 5.0 mile radius from the proposed site. Calculations are required for determining County-wide fuel demand, County-wide fuel supply by fueling position, County-wide supply by site, market area demand, and market area supply.

A new setback requirement is proposed so that for a proposed Gasoline Service Station site with four or more multi-product fuel dispensers ("MPDs") that is located within 1,000 feet of an existing Gasoline Service Station site with four or more MPDs, the proposed Gasoline Service Station must be 1,000 feet from the lot line of schools, parks, playgrounds, day care centers, and certain outdoor uses. Also, all proposed Gasoline Service Stations would be required to be set back 1,000 feet from environmentally sensitive areas such as wetlands, streams, rivers or flood plains.

Three new criteria requiring certain findings for including other uses permitted in the district in a Gasoline Service Station site are proposed for the B-2 and SC Districts, the M-1 and M-2 Districts, and the PEC District. The criteria for the PEC District includes a required finding that the proposed Gasoline Service Station "...relates compatibly with all other uses permitted in the district..."

The minimum lot size for a Gasoline Service Station is proposed to be increased from the current 20,000 square feet to 40,000 square feet, to be increased in the event there are any additional uses proposed for the site.

New requirements for minimum car stacking at a fuel island are proposed, as is a requirement for a finding that there is sufficient circulation area on the site for fuel deliveries with no impeding of traffic on the site. A maximum 90,000 gallons of total fuel storage capacity is proposed.

2. The Petitioner proposes a seemingly minor revision to the Conditional Use section which specifies the burden of proof requirements which must be followed for Conditional Use cases. The current text, which has remained the same for some time, requires the applicant for a Conditional Use to have "...the burden of proof, which shall be by a preponderance of the evidence, and which shall include the burden of going forward with the evidence..."

To better understand what this section is requiring, preponderance of the evidence is generally defined as "... the greater weight of the evidence required...for the trier of fact...to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence".

## **I. DESCRIPTION OF PROPOSAL**

The burden of going forward with the evidence is generally defined as “...the responsibility of the party that is presenting an issue or fact to produce evidence sufficient to support a favorable finding on that issue or fact”, and this is also sometimes called the “burden of production.”

The Petitioner proposes to change this section by adding a provision whereby the standard burden of proof for preponderance of the evidence may be exceeded by a greater burden of proof if this greater burden requirement is “...expressly stated by these regulations.” In addition, the requirement for the burden of going forward with the evidence is deleted.

3. Section 125.0.A.7 of the NT District regulations specify certain general Zoning Regulation requirements which are to be applied to the NT district unless the recorded Final Development Plans (FDP) specify different requirements. The Petitioner proposes new text whereby, if the text of a recorded FDP permits a gasoline service station as a land use, such a use is subject to Planning Board approval using the same standards and criteria as required by Section 131.0 for gasoline service stations as a Conditional Use.

- **The sections proposed to be amended and the amendment text is attached as Exhibit A – Petitioner’s Proposed Text (CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted).**

## **II. HISTORY OF EXISTING REGULATIONS**

- **In the 1949 Zoning Regulations, what were then called “gasoline filling stations” were permitted in the two commercial districts if specially approved by the Zoning Commissioner subject to certain general standards that were applicable to all the other “special approval uses”, but there were not any specific criteria just for gasoline filling stations.**
- **For unknown reasons, in the 1954 Zoning Regulations, the process of having special approval for gasoline service stations was discontinued, and the use was permitted as a matter of right in the B-2, M-1 and M-2 Districts.**
- **In the 1961 Zoning Regulations, gasoline service stations required special approval by Board of Zoning appeals, but were permitted as a matter of right in the S-C and M-1 Districts.**

The significant change to the gasoline service station requirements happened with the approval of Zoning Board case ZB 632, which became effective March 28, 1973 as an amendment to the 1961 Zoning Regulations. With that amendment, gasoline service station uses required Special Exception approval in the B-2, S-C, M-1, and M-2 districts, subject to quite extensive and detailed specific criteria, and the concept of having to reach a finding on “the probability of a reasonable public need” for a proposed gasoline service station (“Public Need”) was initiated as one of these specific criteria.

## II. HISTORY OF EXISTING REGULATIONS

To prove Public Need required market data as evidence, and Public Need was also subject to certain tests based on distances (the “Distance Tests”) which were considered to constitute a lack of probability of Public Need, such as an existing gasoline service station within one mile of the proposed one on the same side of the road except, oddly enough, at intersections. At intersections, having two gasoline service stations within the four quadrants of the intersections or within a one-half mile radius of the intersection was considered to constitute a lack of probability of Public Need.

- **Approximately four and one-half years later, the 1977 Zoning Regulations continued the requirement for Special Exception approval for gasoline service stations in the B-2, S-C, M-1 and M-2 Districts, and the ID District was added as well. The required criteria remained largely the same as approved in ZB 632, and still included the Public Need criteria and the same Distance Tests.**
- **The requirements for gasoline service station Special Exception approval in the 1985 Zoning Regulations remained largely the same as the 1977 Zoning Regulations, except the PEC District was added, and still including the Public Need criteria and the same Distance Tests.**

There was a significant change made in 1989 with ZB 882, which was a very extensive regulation amendment proposal for the entire Zoning Regulations. The revisions to the specific criteria for gasoline service stations kept a requirement for a finding of Public Need supported by market data, but although the consideration of proximity of other stations was kept as a more or less general consideration, the specific Distance Tests were entirely deleted.

- **In the requirements for gasoline service station Special Exception approval in the 1993 Zoning Regulations, the ID District was discontinued but the B-2, SC, M-1, M-2, and PEC Districts remained, and while the Public Need criteria supported by market data was kept, the consideration of proximity of existing stations was only kept in a very general manner.**

The next significant change to the requirements was made in 2001 with the adoption of ZRA-30, the regulation amendment package that included the establishment of the Conditional Use section to replace the Special Exception section. With this, the concept of needing to prove Public Need based on market data was deleted, and was replaced by the criteria requiring a finding that the proposed gasoline service station would not adversely affect the general welfare or logical development of an undefined area, and would not have a “blighting influence” because of a proliferation of such uses within an also undefined area.

- **The Conditional Use criteria for Gasoline Service Stations have remained largely the same to date in the 2004 and 2013 Zoning Regulations.**
- **In the NT (New Town) District, a Gasoline Service Station use must be listed as a permitted use in a Final Development Plan (FDP), and subject to Planning Board approval. Such FDPs contain specific approval criteria for this use.**

### III. BACKGROUND INFORMATION

#### A. Scope of Proposed Amendments

- **The proposed amendments to the Conditional Use criteria for Gasoline Service Stations have the potential to affect any property in the B-2, SC, M-1, M-2 and PEC Districts which meets the minimum lot size requirement and minimum lot frontage requirement, and NT District properties that are designated on an FDP for a Gasoline Service Station use.**
- **All existing Gasoline Service Station uses would be affected as well, because if the proposed amendments were to be approved this would likely cause both nonconforming use and noncomplying use issues for these uses.**

#### B. Agency Comments

- **The following agencies had no objections to the proposal:**
  1. Department of Recreation & Parks
  2. Department of Fire and Rescue Services
  3. Department of Inspections, Licenses and Permits

### IV. EVALUATIONS AND CONCLUSIONS

#### A. Relation to the General Plan

- **The PlanHoward 2030 Policy 5.4 is to “Enhance the Route 1 Corridor revitalization strategy to recognize the distinct character and market potential of diverse corridor segments, and the potential at various intersections, crossings, and nodes for additional retail, restaurant, and employment development as identified in the 2011 Route 1 Market Analysis.**

An Implementing Action of this policy is to “Focus planning efforts to maximize development potential in four types of land-use opportunity areas: redevelopment of high-visibility employment areas; greenfield development of high-visibility employment areas; major industrial park development; and mixed-use opportunity sites.”

This policy covers a wide range of issues, but does include the concept that encouraging redevelopment and mixed-use developments is important for improving the US Route 1 corridor in the future. Gasoline service stations that are incorporated into a larger mixed development in an integrated-design fashion, with similar architecture and sharing road access, have a better character and function more conveniently than “stand-alone” sites, which often have access-related issues, especially at intersections. This is one reason that gasoline service stations were included as a potential use in the CR District. A good example of a gasoline service station being incorporated into a larger development is the Long Gate Shopping Center.

#### IV. EVALUATIONS AND CONCLUSIONS

- **The proposed revisions would likely make it more difficult to gain approval for a new gasoline service station use in such an integrated-design development if there are existing stand-alone stations located within the large market radii specified in the market analysis.**

This could mean that the potential for new and improved gasoline service station sites could be forfeited to maintain older and less appropriate stations. The Petitioner appears to assert that the gasoline service station “market” is merely based on the demand for fuels. A more comprehensive market consideration, however, would also include a consideration of the desire of customers for new, better-quality, convenient, and well-designed gasoline service stations.

- **For the same reasons, the proposed amendments are contrary to Policy 5.9 to “Continue to enhance the vitality of the Route 40 Corridor” , and its Implementing Action to “Encourage commercial renovation, and where appropriate, mixed-use redevelopment by promoting collaboration between owners and neighbors to create attractive focal points that serve the community.”**

As it is the early retail corridor in Howard County, Route 40 is characterized mostly by individual property developments of single uses, such as gasoline service stations, rather than integrated developments of multiple uses. The corridor would benefit from such developments, which can reduce the number of vehicle access points.

- **The petition intends to require that any gasoline service station uses proposed in the NT District would be subject to the same Conditional Use criteria as such uses outside that district, which essentially is the same as requiring Conditional Use approval, although it would be the Planning Board making the decision, and not the Hearing Authority.**

Policy10.2 to “Focus growth in Downtown Columbia, Route 1 and Route 40 Corridors, and some Columbia Village Centers, as well as some older commercial or industrial areas which have redevelopment potential” has an Implementing Action for the “Comprehensive Review of NT Zoning”, to “Revise the NT Zoning Regulations to provide clear criteria for redevelopment of older residential, commercial, or industrial areas outside of Downtown Columbia and the Village Centers.”

Any changes to the treatment of gasoline service station uses in the NT District should be determined through the comprehensive NT regulations review process that will begin in 2014, and not through an individual Zoning Regulation Amendment such as what is being proposed by the Petitioner.

#### IV. EVALUATIONS AND CONCLUSIONS

##### B. Relation to the Zoning Regulations

- **As noted above, by intending to require a somewhat onerous market analysis test for a proposed new gasoline service station, the amendments would likely make it much more difficult to gain approval for a new gasoline service station use which is part of a mixed development if there are existing stand-alone stations located within the defined market areas. In this manner, the existing gasoline service stations would have their market share “protected” from new competition.**

In a number of instances, these existing gasoline service station sites are relatively older uses at intersections, and the frequent vehicle trips to and from these sites mean many turning movements close the intersection, which can cause negative traffic issues.

Therefore, by giving preference to these existing gasoline service stations over new gasoline service stations which may be part of a mixed development, the petition is somewhat contrary to the Legislative Intent of the Zoning Regulations to “To promote the most beneficial relationship between the uses of land and structures, and the road system which serves these uses, having particular regard for the potential amount and intensity of such land and structure uses in relationship to the traffic capacity of the road system, so as to avoid congestion in the streets and roadways, and to promote safe and convenient vehicular and pedestrian traffic movements appropriate to the various uses of land and structures throughout the County.”

- **The petition emphasizes environmental concerns as justification for the amendments by proposing to require substantial setbacks for new gasoline service stations from certain uses and from environmentally sensitive areas, and also by requiring the market study analysis test to limit the number of such uses, and this would appear to be in harmony with the Section 100.0.A.7 section about protecting the environment. However, logically, an older gasoline service station has the potential for equal, if not greater, environmental impacts than a new one.**

If concern for the environment was a true motivation for revising the gasoline service station requirements, to be equitable the existing gasoline service station uses within the market area would also be required to meet the same requirements, and the stations which comply with them to the greatest extent should prevail. The proposed amendments therefore appear to “indulge” existing gasoline service stations over proposed new gasoline service stations.

#### IV. EVALUATIONS AND CONCLUSIONS

##### C. Other Issues

- **There is no clear necessity for the proposed amendments. For the most part, the specific criteria for a Gasoline Service Station use have remained the same for many years, and in the DPZ proposal to the County Council for the 2013 Comprehensive Zoning Plan, other than proposing to change the name of the use category to “Motor Vehicle Fueling Facility”, the overall criteria were proposed to remain substantially the same.**
- **The evaluation of the appropriateness of a Gasoline Service Station use as a Conditional Use should be, as with all Conditional Uses, from land-use based perspectives. Design-related requirements such as minimum lot size, landscaping, screening, and the arrangement of parking uses in relation to the access, and operational-related requirements such as limitations on hours of operation and having a lighting plan have worked successfully for many years in assessing proposed sites.**

The County process for a Conditional Use, however, should not intervene into market-based considerations involving economic competition factors such as the evolving approaches to providing new fueling opportunities, improved convenient services to customers, and pricing. Business competition is best left to the businesses, not to the zoning processes of the government.

- **Previously, in earlier Zoning Regulations the County did try to use a market analysis public-need based criteria to “control” the number of potential Gasoline Service Station uses, but although such a requirement remained in place for some time, it was really not effective at its purpose.**

The pattern appears to have been that the Petitioner would present market data proving that such a public need existed, and the opposition would present market data trying to show the opposite. The Board of Appeals, which was certainly not an expert entity on market-based matters, would then have to decide if there was a reasonable public need, and it almost always did.

The reason this happened is understandable; a Petitioner for a new Gasoline Service Station use would only be attempting to gain Conditional Use approval in the first place if an opportunity to enter the market, and to succeed in the market, was recognized beforehand.



PETITIONER: Howard County Independent Business Association, Inc.

**V. RECOMMENDATION                      *DENIAL***

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-145 as noted above, be DENIED. As noted above, the Department finds that there is no compelling reason to revise the Conditional Use criteria. However, if the County Council finds that revisions should be considered at this time, some of the more land-use based proposed revisions, such as increasing the minimum lot size and setting a new, but more reasonable, setback requirement from environmentally sensitive areas may be more consistent with the types of criteria appropriately considered for an evaluation of a Conditional Use case.

	12/19/13
Marsha S. McLaughlin, Director	Date

MM/JRL/jrl

**NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.**

## **Exhibit A –Petitioner’s Proposed Text**

### **Section 131.N. 25. Gasoline Service Stations**

PURPOSE: IT IS THE PURPOSE OF THIS SECTION TO PERMIT THE DEVELOPMENT OF GASOLINE SERVICE STATIONS THAT ARE CONSISTENT WITH THE HEALTH, SAFETY NEEDS AND PLANNING GOALS OF THE COUNTY. IT IS FURTHER THE PURPOSE OF THIS SECTION TO ESTABLISH REASONABLE STANDARDS TO PREVENT SUCH CONCENTRATION OF GASOLINE SERVICE STATIONS THAT WOULD TEND TO CREATE UNHEALTHY LEVELS OF GROUND LEVEL OZONE, INCREASE THE RISK OF BLIGHT AND ENVIRONMENTAL CONTAMINATION, AS WELL AS TO ALLOW SUCH USES TO BE ESTABLISHED ONLY IN APPROPRIATE AREAS IN ORDER TO ENSURE THE PROTECTION OF ENVIRONMENTALLY SENSITIVE AREAS. THE U.S. ENVIRONMENTAL PROTECTION AGENCY HAS DESIGNATED HOWARD COUNTY AS ONE OF SIX COUNTIES IN THE STATE OF MARYLAND TO BE A NON-ATTAINMENT AREA WITH RESPECT TO THE MINIMUM STANDARDS UNDER THE FEDERAL CLEAN AIR ACT, AND DUE TO THE CHANGES IN THE GASOLINE SERVICE STATION INDUSTRY AND THE NEED TO PREVENT THE DEVELOPMENT OF UNNECESSARY GASOLINE SERVICE STATIONS, THESE REGULATIONS ESTABLISH REASONABLE STANDARDS TO MITIGATE THE RISK TO PUBLIC HEALTH AND WELFARE AND TO ENSURE WELL-PLANNED DEVELOPMENT OF GASOLINE SERVICE STATIONS WHERE DEFINITE NEED EXISTS.

A conditional use FOR A GASOLINE SERVICE STATION may be granted in the B-2, SC, M-1, M-2, or PEC [[Districts for gasoline service stations.]]DISTRICTS provided that:

- a. [[a.]] The use will not adversely affect the general welfare or logical development of the neighborhood or area in which the station is proposed [[and will not have a blighting influence as a result of a proliferation of gasoline service stations within a particular area.]]
- b. THE USE WILL NOT HAVE A BLIGHTING INFLUENCE BECAUSE THERE EXISTS A REASONABLE PUBLIC NEED WITHIN A DESIGNATED AREA FOR THE PROPOSED GASOLINE SERVICE STATION, AS DEMONSTRATED BY A NEEDS ASSESSMENT STUDY PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.
  1. WHERE THE LOT LINE OF A PROPOSED GASOLINE SERVICE STATION IS MORE THAN 2,500 FEET AWAY FROM THE LOT LINE OF AN EXISTING GASOLINE SERVICE STATION, A REASONABLE PUBLIC NEED SHALL BE ESTABLISHED IF THE NEEDS ASSESSMENT STUDY DEMONSTRATES THAT THE DIFFERENCE BETWEEN THE MARKET DEMAND AND SUPPLY WITHIN IN TWO OF THE THREE MARKET AREAS, AS DEFINED BELOW IN SECTION 3(A), EXCEEDS THE AVERAGE COUNTYWIDE SUPPLY PER GASOLINE SITE, AS DEFINED BELOW IN SECTION 3(G).

2. WHERE THE LOT LINE OF THE PROPOSED GASOLINE SERVICE STATION IS WITHIN 2,500 FEET OF THE LOT LINE OF AN EXISTING GASOLINE SERVICE STATION, AN EVIDENTIARY PRESUMPTION EXISTS THAT THERE IS NO REASONABLE NEED FOR THE PROPOSED GASOLINE STATION. THE PRESUMPTION OF A LACK OF NEED MAY BE OVERCOME IF THE NEEDS ASSESSMENT STUDY DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT THE DIFFERENCE BETWEEN THE MARKET DEMAND AND SUPPLY IN ALL THREE OF THE MARKET AREAS, AS DEFINED BELOW IN SECTION 3(A), EXCEEDS THE AVERAGE COUNTYWIDE SUPPLY PER GASOLINE SITE, AS DEFINED BELOW IN SECTION 3(G).
3. THE NEEDS ASSESSMENT STUDY SHALL DEMONSTRATE NEED BY COMPUTING THE FOLLOWING MARKET DATA:
  - A. MARKET AREAS FOR THE PROPOSED GASOLINE SERVICE STATION REFERS TO EACH OF THE FOLLOWING AREAS: (I) THE AREA WITHIN A 2.0 MILE RADIUS OF THE PROPOSED LOCATION; (II) THE AREA WITHIN A 3.0 MILE RADIUS OF THE PROPOSED LOCATION; AND (III) THE AREA WITHIN A 5.0 MILE RADIUS OF THE PROPOSED LOCATION.
  - B. COUNTYWIDE DEMAND SHALL BE CALCULATED BASED ON THE MOST RECENT 12 MONTH CONSUMPTION OF GASOLINE FOR THE STATE OF MARYLAND AND A HOUSEHOLD-EMPLOYEE FACTOR (COMPUTED USING 80 PERCENT OF HOUSEHOLDS PLUS 20 PERCENT OF EMPLOYEES) FOR BOTH THE STATE AND THE COUNTY.
  - C. COUNTYWIDE SUPPLY BY FUELING POSITION RATE SHALL BE CALCULATED BY DIVIDING THE COUNTYWIDE ANNUAL AVERAGE GASOLINE CONSUMPTION IN GALLONS BY THE TOTAL NUMBER OF FUELING POSITIONS (PUMPS AVAILABLE ON EACH MULTIPLE PRODUCT DISPENSERS) COUNTYWIDE.
  - D. COUNTYWIDE SUPPLY BY SITE SHALL BE CALCULATED BY DIVIDING THE COUNTYWIDE ANNUAL AVERAGE GASOLINE CONSUMPTION IN GALLONS BY THE TOTAL NUMBER ACTIVE SITES COUNTYWIDE.
  - E. MARKET AREA DEMAND SHALL BE CALCULATED FOR EACH MARKET AREA BY MULTIPLYING THE HOUSEHOLD-EMPLOYEE FACTOR FOR THE MARKET AREA BY THE COUNTYWIDE DEMAND PER HOUSEHOLD-EMPLOYEE FACTOR.
  - F. MARKET AREA SUPPLY SHALL BE CALCULATED FOR EACH MARKET AREA BY MULTIPLYING THE TOTAL NUMBER OF FUELING POSITIONS WITHIN THE MARKET AREA BY THE COUNTYWIDE SUPPLY BY FUELING POSITION RATE.

- G. A NEW SITE SHALL BE INDICATED FOR EACH MARKET AREA WHERE THE DIFFERENCE BETWEEN THE MARKET AREA DEMAND AND THE MARKET AREA SUPPLY EXCEEDS THE AVERAGE COUNTYWIDE SUPPLY PER SITE.
- c. IF THE PROPOSED GASOLINE SERVICE STATION IS DESIGNED TO DISPENSE MORE THAN 1.8 MILLION GALLONS PER YEAR, AS DETERMINED BY THE PROPOSED USE OF FOUR (4) OR MORE MULTI-PRODUCT DISPENSERS, AND IS LOCATED WITHIN 1,000 FEET OF THE LOT LINE OF AN EXISTING GASOLINE SERVICE STATION ALSO DESIGNED TO DISPENSE MORE THAN 1.8 MILLION GALLONS PER YEAR, AS DETERMINED BY THE USE OF FOUR (4) OR MORE MULTI-PRODUCT DISPENSERS, THE PROPOSED GASOLINE SERVICE STATION SHALL NOT BE LOCATED WITHIN 1,000 FEET OF THE LOT LINE OF ANY PUBLIC OR PRIVATE SCHOOL, OR ANY PARK, PLAYGROUND, DAY CARE CENTER, OR ANY OUTDOOR USE CATEGORIZED AS A CULTURAL, ENTERTAINMENT AND RECREATION USE.
- d. A 1,000 FOOT SETBACK SHALL BE REQUIRED OF A GASOLINE SERVICE STATION THAT IS PROPOSED TO BE LOCATED NEAR AN ENVIRONMENTALLY SENSITIVE AREA, INCLUDING WETLANDS, STREAMS, RIVERS OR FLOOD PLAINS.
- e. IN THE B-2 AND SC DISTRICTS, OTHER USES PERMITTED IN THE DISTRICT, CAR WASHES AND CONVENIENCE STORES MAY BE LOCATED ON THE SAME LOT AS A GASOLINE SERVICE STATION PROVIDED THAT (I) ALL OF THE USES ARE APPROVED BY THE HEARING AUTHORITY; AND (II) THE MINIMUM LOT AREA IS INCREASED TO ACCOMMODATE THE COMBINATION OF USES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 131.N.25.i.
- f. IN THE M-1 AND M-2 DISTRICTS, OTHER USES PERMITTED IN THE DISTRICT, CAR WASHES AND CONVENIENCE STORES WITH A GROSS FLOOR AREA NOT TO EXCEED 3,500 SQUARE FEET MAY BE LOCATED ON THE SAME LOT AS A GASOLINE SERVICE STATION PROVIDED THAT (I) ALL OF THE USES ARE APPROVED BY THE HEARING AUTHORITY; AND (II) THE MINIMUM LOT AREA IS INCREASED TO ACCOMMODATE THE COMBINATION OF USES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 131.N.25.i.
- g. IN THE PEC DISTRICT, THE HEARING EXAMINER SHALL DETERMINE THAT THE PROPOSED GASOLINE SERVICE STATION RELATES COMPATIBLY WITH ALL OTHER USES PERMITTED IN THE DISTRICT ACCORDING TO THE COMPREHENSIVE PLAN OF DEVELOPMENT FOR THE AREA. OTHER USES PERMITTED IN THE DISTRICT, CAR WASHES AND CONVENIENCE STORES WITH A GROSS FLOOR AREA NOT TO EXCEED 3,500 SQUARE FEET MAY BE LOCATED ON THE SAME LOT AS A GASOLINE SERVICE STATION PROVIDED THAT (I) ALL OF THE USES ARE APPROVED BY THE HEARING AUTHORITY; AND (II) THE MINIMUM LOT AREA IS INCREASED TO ACCOMMODATE THE COMBINATION OF USES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 131.N.25.i.

- h.**     [[b.]]       The minimum lot size for a gasoline service station is [[20,000]]40,000 square feet. If a gasoline service station is combined with another use on the same lot, AT A MINIMUM, the minimum lot size shall be increased [[in accordance with the provisions of Section 131.N.25.i.]]BY AN AREA EQUAL TO THE GROSS SQUARE FOOTAGE OF FLOOR AREA, PARKING AREA AND LOADING OR STACKING AREAS REQUIRED FOR THE ADDITIONAL USES.
- i.**     [[c.]]       The lot shall have at least [[120]]150 feet of frontage on a public road. [[If at the intersection of two public roads, the total of the frontage along both roads may be used if ingress or egress is provided to both roads.]]
- j.**     [[d.]]       At least 20 percent of the site area shall be landscaped. The landscaping plan shall include plantings which enhance the appearance of the site from public roads and provide appropriate buffering for adjacent uses.
- k.**     [[e.]]       Solid walls such as masonry or wood and masonry may be required by the Hearing Authority when the site borders a residential district. When solid walls are required, landscape planting is required on the outside of the wall.
- l.**     [[f.]]       Refuse areas shall be fenced or screened from view. The plan shall indicate the disposal methods to be used for all waste material generated by vehicle repair operations.
- m.**     [[g.]]       Access driveways and on-site paved areas shall be designed and located to ensure safe and efficient movement of traffic and pedestrians-, AND SHALL PROVIDE FOR THE FOLLOWING:

  - (1) STACKING FOR AT LEAST FOUR (4) CARS ON EACH SIDE OF A GASOLINE DISPENSING ISLAND; AND
  - (2) SUFFICIENT AREA TO PROVIDE FOR THE DELIVERY OF MOTOR FUEL WITHOUT IMPEDING THE FLOW OF TRAFFIC ON THE SITE.
- n.**     UNDERGROUND STORAGE TANKS FOR MOTOR FUELS SHALL BE LIMITED TO A TOTAL OF NINETY THOUSAND (90,000) GALLONS FOR ALL FORMS OF FUEL.
- o.**     [[h.]]       Operation

  - (1) [[(1)]]       Outside operations shall be limited to the dispensing of gasoline, oil, water, pressurized air, the changing of tires and minor servicing. Storage of all automotive supplies shall be within the main structure.
  - (2) [[(2)]]       Vending machines and the sale of propane are permitted as accessory uses, provided these uses are screened or enclosed if required by the Hearing Authority.
  - (3) [[(3)]]       The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the [[LANDSCAPINGPLAN]]LANDSCAPING PLAN. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the gasoline service station.

- (4) [(4)] Where a gasoline service station is adjacent to a residential district, its hours of operation and a detailed lighting plan shall be approved by the Hearing Authority.

[[i. Other Uses

- (1) Other uses may be located on the same lot as a gasoline service station, including uses permitted in the zoning district as well as car washes and convenience stores, provided that all uses are approved by the Hearing Authority; and the
- (2) The minimum lot area is increased to accommodate the combination of uses. At a minimum, the minimum lot size of 20,000 square feet must be increased by an area equal to the gross square footage of floor area, parking area and loading or stacking areas required for the additional uses.
- (3) In the PEC, M-1 and M-2 districts, the gross floor area of convenience stores shall not exceed 3,500 feet.]]

p. [[j.]] Abandonment

- (1) [(1)] The premises (including landscaping) of any gasoline service station which is not in continuous operation or is abandoned shall be maintained in the same manner as is required under these regulations for operating gasoline service stations.
- (2) [(2)] A conditional use for a gasoline service station shall become void upon notice of abandonment by the owner. If notice of abandonment is not received, but it is determined by the Department of Planning and Zoning that a gasoline service station has not been in continuous operation for a period of twelve months, a revocation hearing shall be initiated by the Department of Planning and Zoning in accordance with the procedures set forth in Section 131.L. For purposes of this subsection, "continuous operation" shall mean operation as a gasoline service station at least eight hours per day, five days per week.
- (3) [(3)] If a gasoline service station is abandoned and the conditional use becomes void as provided above, all gasoline pumps, pump island canopies and other improvements (not including buildings) shall be removed from the site within six months of the date the conditional use becomes void.

**Section 131. G. Burden of Proof**

The applicant for a conditional use shall have the burden of proof, which shall be by a preponderance of the evidence UNLESS A GREATER BURDEN IS EXPRESSLY STATED BY THESE REGULATIONS, and which shall include [[the burden of going forward with the evidence and]] the burden of persuasion on all questions of fact which are to be determined by the Hearing Authority or are required to meet any provisions of these regulations.

## **SECTION 125: NT (New Town) District**

### **A. Definitions, Requirements and Restrictions Applicable to NT Districts.**

#### **7. Except as otherwise provided in the Final Development Plan, the following restrictions shall be applicable to NT Districts:**

- a. Access shall be provided from every use site to a public street or to a system of common streets and ways connecting with the public street system.
- b. The off-street parking requirements of Section 133 of these Regulations shall be applicable.
- c. The accessory use provisions of Section 110 shall be applicable to all residential uses within the NT District.
- d. The provisions of Section 128 (Supplementary Zoning District Regulations) shall apply to the NT District except for those provisions which specifically exclude the NT District.
- e. NOTWITHSTANDING ANY OTHER PROVISIONS IN THIS SECTION 125, IF THE CRITERIA IN A RECORDED FINAL DEVELOPMENT PLAN IDENTIFIES A GASOLINE SERVICE STATION AMONG THE SPECIFIED LAND USES PERMITTED, A GASOLINE SERVICE STATION IS PERMITTED ONLY UPON APPROVAL BY THE PLANNING BOARD AFTER A PUBLIC HEARING WHERE THE PROPERTY OWNER ESTABLISHES THAT THE GENERAL STANDARDS AND SPECIFIC REQUIREMENTS IN SECTION 131 FOR A CONDITIONAL USE FOR A GASOLINE SERVICE STATION ARE MET. TO THE EXTENT THERE IS ANY CONFLICT BETWEEN THE CRITERIA IN THE RECORDED FINAL DEVELOPMENT PLAN AND THE GENERAL STANDARDS AND SPECIFIC REQUIREMENTS FOR A CONDITIONAL USE FOR A GASOLINE SERVICE STATION IN SECTION 131, THE MORE RESTRICTIVE PROVISION SHALL APPLY.

Subject to any additional specific permitted uses of land which may be designated on an approved final development plan pursuant to Section 125.C.3.d of these Regulations, if an approved final development plan designates POR, B-1, B-2, SC or M-1 District uses or any combination thereof for a specific area, then the general permitted uses for such area shall be those uses permitted as a matter of right in those districts,[[. However, the]] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 7. THE bulk regulations for those districts regulating the location of structures, height limitations, setback provisions, minimum lot sizes, and coverage requirements shall not apply inasmuch as the controls therefore shall be included in the final development plan approved by the Planning Board as provided under these Regulations.